

# ITEL

May 26, 1988

RECORDED 1 5677  
FILING 1125

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000

**JUN 9 1988-2 30 AM**

**INTERSTATE COMMERCE COMMISSION**

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Date 6/9/88  
Fees \$13  
ICC Washington, D.C.

**Re: Schedule 2 dated May 23, 1988, to Lease dated as of December 29, 1979, between Itel Railcar Corporation, as assignee of United States Railway Leasing Company, and E. I. du Pont de Nemours & Co.**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Schedule 2 (original lease attached thereto and made a part thereof) under a new recordation number.

The parties to the aforementioned instrument are listed below:

Itel Railcar Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

E. I. duPont de Nemours & Co. (Lessee)  
1007 Market Street  
Wilmington, Delaware 19898

This Schedule covers twenty-one (21) 4,750 cubic foot, 100-ton covered hoppers bearing reporting marks (LO) USEX 520-544 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker  
Legal Department

PS:  
Enclosures

JUN 9 1988-2 30 AM

LOT NO. 1814-01

## INTERSTATE COMMERCE COMMISSION SCHEDULE 2

THIS SCHEDULE 2 ("Schedule") dated May 23, 1988, to Lease dated December 29, 1979 ("Lease"), by and between ITEL RAILCAR CORPORATION, as assignee of United States Railway Leasing Company ("Lessor"), and E.I. DU PONT DE NEMOURS & CO., (INC.) ("Lessee").

1. Except as otherwise provided herein, all terms defined in the Lease shall have the meanings set forth therein when used in this Schedule.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Lease and this Schedule:

AAR Mech. Design.	Description	Reporting Marks and Numbers	Length	Dimensions Inside Width	Height	Door Width	Number of Cars
LO	4,750 cubic ft. 100 ton covered hoppers	USEX 520- 544 (N.S.)	54'1"	9'10"	--	--	21

3.
  - A. The term of the Lease with respect to each Car described in this Schedule shall commence on May 7, 1988 and shall continue as to all of the Cars described in this Schedule through and including May 31, 1989 (the "Initial Term").
  - B. If the Lease has not been terminated early and no unremedied default has occurred and is continuing pursuant to Section 18 of the Lease, the Lease shall automatically be extended for two (2) consecutive periods of twelve (12) months each (each such period an "Extended Term") with respect to all of the Cars described in this Schedule provided that Lessor or Lessee may terminate the Lease effective as of the end of the Initial Term or any Extended Term as to all or any of the Cars described in this Schedule by providing not less than sixty (60) days prior written notice to the other.
  - C. Lessee shall have the right to refuse delivery of any Car which has not been repaired and released from a maintenance facility on or after May 1, 1988.
  - D. Lessee shall be liable for fifty percent (50%) of any freight charges relating to the delivery of the Cars to Lessee, and will reimburse Lessor within thirty (30) days of receiving an invoice from Lessor for such amount.

4. During the term of the Lease, Lessor may, at its expense, replace any or all Cars described on this Schedule with similar equipment upon prior written notice from Lessor to Lessee.
  
5. A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules; provided, however, that such repairs, maintenance and servicing ("Maintenance") shall be performed at Lessee's expense in the event such Maintenance (i) was occasioned by the fault of Lessee; (ii) results from loading, unloading or use other than permitted under the Lease; (iii) is for the purpose of repair, replacement or maintenance of interior lading equipment, special interiors and linings or removable parts; (iv) relates to damage resulting from any commodity or material loaded in any Car; or (v) arises in those instances in which the Interchange Rules would apply to Lessee for the loss, damage, destruction or liability requiring such Maintenance. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition, and Lessee shall be liable to Lessor for any repairs required for damage not noted, except for inherent or hidden defects, at the time of interchange. Lessee may make running repairs to those parts of the Cars specified in the attached Exhibit A to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's property unless Lessee has received prior approval from Lessor and all such repairs are performed under the direction and control of Lessor.
  
- B. Lessor shall also make, at its expense, all alterations, modification or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Lessor shall have the right to perform Nonroutine Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee or at a contract repair facility. "Nonroutine Repairs" is defined as repairs of a type that Lessor determines Lessee would not normally perform or that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Nonroutine Repairs.

C. Any repairs performed to the Cars by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties. Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all railcars owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities.

D. Lessee shall, within thirty (30) days after receipt of Lessor's invoice, pay to Lessor a total fixed cost of

for the Cars, and shall, during the term of the Lease, and at its expense, be responsible for the Maintenance of

6. A. Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while the Lease is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party") and any assignee of Lessor as additional named insureds and shall also list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.

B. Lessee shall be permitted to self-insure on any specified interest, provided that Lessee hereby warrants to place Lessor in the same position as if the insurance described above had been effected.

7. Lessor shall be liable at all times for and shall pay all federal, state, or other governmental property taxes assessed or levied against the Cars. Lessee shall be liable for all sales, use or gross receipts taxes (except net income tax) imposed upon the Cars or upon time and mileage payments during the term of this Schedule.
8. The fixed rent ("Fixed Rent") shall be  
per Car per month for each full calendar month ("Month") during the Initial Term and any Extended Term. The Fixed Rent for any Car which is not subject to the Lease for an entire Month shall be prorated at  
per day per Car during such Month.
9. Lessee shall insure that each Car returned to Lessor upon the expiration or termination of the Lease shall be (i) in the same or better condition, order and repair as when delivered to Lessee, normal wear excepted; (ii) in interchange condition in accordance with AAR and FRA regulations; and (iii) suitable for loading and free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee.
10. A. Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of the Lease. Accordingly, following written notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of the Lease), and is continuing under such financing agreement, such party may require in writing either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.  
  
B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, the Lease and this Schedule hereto and to confirm the subordination provisions contained in the Lease.
11. Any notice required or permitted to be given pursuant to the terms of the Lease shall be properly given when made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor:       Itel Railcar Corporation  
              55 Francisco Street  
              San Francisco, CA 94133  
              Attn: President

Lessee: E.I. duPont de Nemours & Co.  
1007 Market Street  
Wilmington, DE 19898  
Attn: J.J. Dempsey  
Senior Specialist, Rail Leasing

12. Except as expressly modified by this Schedule, all terms and provisions of the Lease shall remain in full force and effect with respect to all cars subject to the Lease.
13. This Schedule may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

E.I. DU PONT DE NEMOURS & CO., (INC.)

By: *AD Hayes*  
Title: *President*  
Date: *5/23/88*

By: *JJ Dempsey*  
Title: *SR. SPECIALIST - RAIL LEASING*  
Date: *5/13/88*

STATE OF CALIFORNIA       )  
                                  ) ss:  
COUNTY OF SAN FRANCISCO )

On this 23rd day of May, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Schedule 2 signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF DE               )  
                                  ) ss:  
COUNTY OF NEW CASTLE )

On this 13TH day of MAY, 1988, before me personally appeared J.J. DEMPSEY, to me personally known, who being by me duly sworn says that such person is S.R. SPECIALIST of E.I. duPont de Nemours & Co., (Inc.), that the foregoing Schedule 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

M. Kate Maliszewski  
Notary Public

MY COMMISSION EXPIRES  
DECEMBER 11, 1989

**EXHIBIT A**  
Covered Hoppers

Running Repairs

Angle Cocks

Air Hose

Train Line

Operating Levers and Brackets

Sill Steps

Grab Irons

Brake Shoes

Brake Shoe Keys

Brake Connecting Pin

Brake Head Wear Plates

Air Brakes

Hand Brakes

Brake Beams

Truck Springs

Running Repairs Continued

Wheels

Yokes

Knuckles/Pins

Slack Adjuster

Couplers

Draft Gears

Coupler Carriers

Center Plates (Not Replacement)

Cotter Keys

Roller Bearing Adapters

Outlet Gate Repair  
(Not Replacement)

Hatch Cover Repair  
(Not Replacement)



**UNITED STATES RAILWAY LEASING COMPANY  
RAILROAD CAR LEASE AGREEMENT**

AGREEMENT made and entered into this 29 day of December, 1979,  
between UNITED STATES RAILWAY LEASING COMPANY, an Illinois corporation (hereinafter  
called "United") and E.I. Dupont DeNemours & Company Inc.  
a(n) Delaware corporation, with its principal place of business at  
Wilmington, Delaware 19898  
(hereinafter called "Lessee")

**RECITALS**

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Railroad Car Lease Agreement and the Schedules from time to time made a part hereof (together hereinafter referred to as the "Lease").

**AGREEMENT**

It is Agreed:

1. **Lease of Cars.** United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United, railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof and as set forth in Schedules which may from time to time be added to this Railroad Car Lease Agreement and thereby made a part hereof. The Lease shall become effective as to any Car immediately upon its delivery to and acceptance by Lessee pursuant to Paragraph 3. The Schedules added hereto shall be in the form of Schedule 1 hereto, shall contain such other terms and provisions as United and Lessee may agree upon and shall, if requested by either party, have the signatures thereto acknowledged by a notary public. The terms and provisions of the Schedule shall control over any inconsistent or contrary terms and provisions in this Railroad Car Lease Agreement.

2. **Delivery of Cars.** United shall deliver the Cars as promptly as is reasonably possible. United's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and United shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond United's control. Delivery shall be F.O.T. the point specified in the applicable Schedule. From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse United for the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from repair shops, storage or terminal facilities.

3. **Condition of Cars - Acceptance.** All Cars delivered under this Lease shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in the applicable Schedule; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within five days after United shall give Lessee notice that Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point specified in the notice

and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease. At United's request, Lessee shall deliver to United an executed Certificate of Acceptance in the form of Exhibit A with respect to all Cars.

4. **Use and Possession.** Throughout the continuance of this Lease so long as Lessee is not in default under this Lease, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with all Interchange Rules; (ii) in compliance with the terms and provisions of this Lease, (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in temporary or incidental use in Canada; and (v) in such service as will not constitute a train hauling predominantly a single commodity, such as coal or grain, between the same points on a regular basis, commonly referred to as a "unit train."

5. **Term.** This Lease shall be effective as to any Car on the date of delivery by United of such Car, as provided in Paragraph 2 hereof. The lease term with respect to all Cars covered by a particular Schedule shall commence on the Average Date of Delivery of the Cars covered by such Schedule and shall terminate upon expiration of the lease term specified in such Schedule unless sooner terminated in accordance with the provisions of this Lease.

6. **Rental.** (a) Per Car. During the term of this Lease, Lessee shall pay to United for each Car, commencing on the date of delivery thereof, the monthly rental specified in the applicable Schedule.

(b) Mileage Credits. If the Cars bear United's reporting marks and numbers, any time and mileage payments paid or allowed by railroads on the Cars shall be the property of United, but United shall credit time and mileage payments actually received by it (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this Lease with respect to Cars covered by a particular Schedule; provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total rental payable by Lessee.

7. **Payment.** Lessee shall make payment of all sums due hereunder to United in immediately available funds at the address provided in Paragraph 21 hereof, or such other place as United may direct. Rental payments shall be made monthly in advance on or before the 1st day of each month for which such rental is due, except that the first full month's payment shall, in addition, include rental covering any prior period of less than one month.

8. **Title.** Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. **Repairs.** Lessee shall perform or cause to be performed and shall pay all costs and expenses of all Repair Work without any abatement in rent or other loss, cost or expense to United. Any parts, replacements or additions made to any Car shall be accessions to such Car and title thereto shall immediately vest in United.

10. **Substitution of Cars.** United may, at any time and from time to time, replace any Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to the Schedule applicable to such Cars and such other or further documents as may be required

by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which United has assigned its rights under such Schedule, as permitted in Paragraph 19 hereof.

11. **Abatement of Rent.** Rental payments on any Car shall not abate if such Car is out of service for Repair Work nor on account of any other reason whatsoever.

12. **Taxes.** Lessee shall be liable at all times for and shall pay or reimburse United for payment of all Federal, State or other governmental charges or taxes assessed or levied against the Cars, including but not limited to (i) all Federal, State or other governmental property taxes assessed or levied against the Cars; (ii) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars, this Lease, or the manufacture, acquisition, or use of the Cars for or under this Lease, (iii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iv) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

13. **Liens.** Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect United's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

14. **Indemnities — Patent Covenants.** Lessee agrees to indemnify United and hold it harmless from any loss, expense or liability which United may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises solely from United's negligence. United agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents; except if such invention was used or incorporated by reason of Lessee's specifications. The term "United" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14. Lessee's indemnity shall not eliminate the rights given Lessee under any manufacturer's warranty assigned to it pursuant to Paragraph 22. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. **Lettering — Inventory.** At United's election all Cars may be marked to indicate the rights of United, or an assignee, mortgagee, trustee, pledgee or security holder of United or a lessor to United and may bear the following inscription: "Title to this Car subject to documents recorded under Section 20c of the Interstate Commerce Act." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction or consent of United. United may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of United, but no more than once every year, furnish to United its certified inventory of all Cars then covered by this Lease.

16. **Loss, Theft or Destruction of Cars.** In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise United of such occurrence. Except where United shall have received payment for such Casualty Car from a handling railroad or other party under and pursuant to

Interchange Rules, Lessee shall, within 45 days after demand by United, promptly make payment to United in the same amount as is prescribed in the Interchange Rules for the loss of such Car. This Lease shall continue in full force and effect with respect to any Casualty Car irrespective of the cause, place or extent of any casualty occurrence, the risk of which shall be borne by Lessee, provided, however, that this Lease shall terminate with respect to a Casualty Car on the date United shall receive all amounts and things granted it on account of such Car under this Paragraph 16, and thereafter Lessee shall have no further liability to United under this Lease with respect thereto excepting accrued rent and liabilities arising or existing under Paragraphs 12, 13, and 14 hereof.

17. **Return of Cars.** Upon the expiration or termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to United by delivering same to United at such repair shop, storage or terminal facility as United may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs, and shall be free from all accumulations or deposits, ~~from commodities transported in or on the Cars while in the service of Lessee.~~ If any of the Cars do not bear United's reporting marks and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as United shall designate in writing to Lessee prior to the end of the lease term. Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. ~~If Lessee is a railroad, Lessee agrees to provide storage at its expense, upon the request of United, for any or all of the Cars for a period of ninety (90) days from the date of expiration or termination of this Lease.~~ Nothing in this Paragraph 17 shall give Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to such Car.

except those which cannot be reasonably avoided, 1/21/82

DELETE  
11/10/82  
11/10/82

18. **Default.** If Lessee shall fail to make any payment required under this Lease within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part under this Lease, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may at its election:

(a) terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating the Lease repossess the Cars, and may relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. United shall not be obligated to accept any lessee offered by Lessee, or to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election by United to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

The remedies provided in this Paragraph 18 in favor of United shall not be deemed exclusive but

shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in United's favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

19. **Sublease and Assignment.** The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars, without the prior written consent of United; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease;

except to  
American Refrigerator Transit Co.  
(a wholly owned subsidiary of the Missouri Pacific Railroad Co.) or any of its subsidiary lines,

(b) all rights of United under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease, chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by United provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. In the event that Lessee receives notice that United has assigned its rights under this Lease with respect to Cars subject to a particular Schedule, Lessee shall, if requested in writing by United or such assignee, make separate payment of rentals and other sums due with respect to such Cars to such place and person as United or such assignee shall from time to time designate. ~~The right of any assignee or any party on behalf of whom such assignee is acting shall not be subject to any defense, set off, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of United under this Lease or by reason of any other indebtedness or liability at any time owing by United to Lessee.~~

1/2/80 (709)

DELETE

1/2/80 (709)

The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking under this Lease nor to impose any liability or undertaking under this Lease upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. **Opinion of Counsel.** Upon the request of United or its assignee, Lessee will deliver to United an opinion of counsel for Lessee, addressed to United or its assignee in form and substance satisfactory to counsel for United or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

21. *Notice.* Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

United at: The East Tower, Suite 900  
2550 Golf Road  
Rolling Meadow, Illinois 60008

or at such other addresses as United may from time to time designate by such notice in writing and to Lessee at the address first above written or any such other address as Lessee may from time to time designate by notice in writing.

22. *Warranty.* United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. United makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in the applicable Schedule, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. Lessee represents that all of the matters set forth in Paragraphs 20(a), (b) and (c) shall be and are true and correct at all times that any Car is subject to this Lease.

23. *Governing Law — Writing.* The terms of this Lease and all rights and obligations under this Lease shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. *Counterparts.* This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. *Severability — Waiver.* If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to exercise any rights under this Lease shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. *Terminology.* In construing any language contained in this Lease, no reference shall be made, and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice-versa.

27. *Past Due Payments.* Any nonpayment of rentals or other sums due under this Lease, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to twelve per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

28. **Definitions.** For all purposes of this Lease the following terms shall have the following meaning:

(a) "Interchange Rules" — all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(b) "Average Date of Delivery" — that date which is determined by (i) multiplying the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car under the applicable Schedule, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered under the applicable Schedule and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car under the applicable Schedule. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate of Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

(c) "Repair Work" — all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair, in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance necessary to keep and maintain the Cars in good working order and repair.

wear and tear  
from ordinary  
use the passage  
of time excep-  
ted,

(d) "Casualty Cars" — Cars which are lost, stolen, destroyed or damaged beyond economic repair.

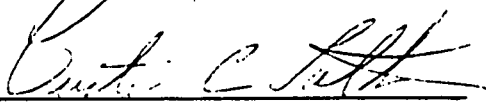
(e) "Replacement Cars" — Cars of substantially similar description and specification to that set forth in the applicable Schedule which are substituted for Casualty Cars.

1/2/80  
(769)

29. **Benefit.** Except as otherwise provided in this Lease the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of United, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

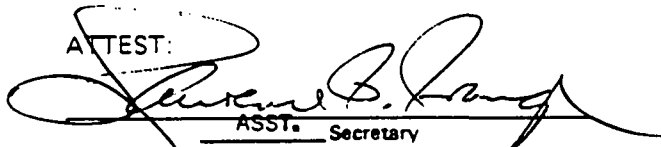
IN WITNESS WHEREOF, United and Lessee have duly executed this Railroad Car Lease Agreement as of the day and year first above written.

**UNITED STATES RAILWAY LEASING COMPANY**  
an Illinois corporation

By   
~~Senior~~ ~~Vice~~ ~~President~~

[CORPORATE SEAL]

ATTEST:

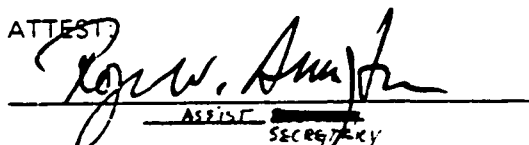
  
~~ASST.~~ ~~Secretary~~

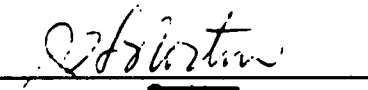
E.I. Dupont DeNemours & Company Inc.

a(n) Delaware corporation

[CORPORATE SEAL]

ATTEST:

  
~~ASST.~~ ~~Secretary~~

By   
~~Director~~

DIRECTOR - TRANSPORTATION & DISTRIBUTION DEPT.



UNITED'S LOT NO. 1814

Schedule 1

Page 1 of Schedule 1 dated December 29, 19 79 to Lease dated December 29, 19 79, by and between United States Railway Leasing Company ("United") and E.I. Dupont DeNemours & Company Inc. ("Lessee")

TYPE AND DESCRIPTION OF CAR:

52'5" Insulated Boxcar equipped with 20" Cushion Underframe

NUMBER OF CARS:

20

INTERIOR EQUIPMENT:

Dual Air Pak Bulkheads

SPECIAL LININGS:

None

PERMITTED LADING USE:

Non-corrosive commodities

\*REPORTING MARKS AND NUMBERS:

1/2/80 ARDP  
745 787000-787019

SPECIFICATIONS DESIGNATED BY LESSEE:

None

INITIAL F.O.T. DELIVERY POINT:

Cars in Lessee's possession

\*When United's reporting marks are specified, this lease is subject to the granting of all necessary consents to such use by carrier or any other approval now or hereafter required by tariff, Interchange Rules or other applicable laws and regulations.

Page 2 of Schedule 1 dated December 29, 19 79 to Lease dated  
December 29, 19 79, by and between United States Railway Leasing Company  
("United") and E.I. Dupont DeNemours & Company Inc. ("Lessee")

LEASE TERM: 5 Year

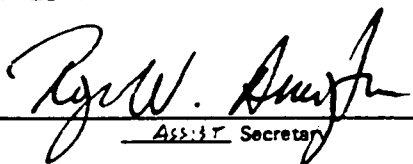
MONTHLY RENTAL:

SPECIAL TERMS: None

E.I. Dupont DeNemours & Company Inc.  
Lessee

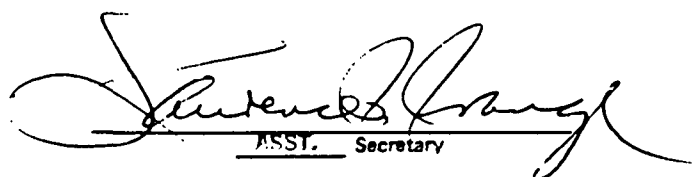
By   
President  
DIRECTOR - TRANSPORTATION & DISTRIBUTION DEPT.

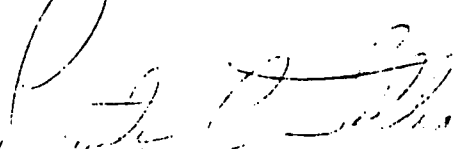
[CORPORATE SEAL]  
ATTEST:

  
ASST. Secretary

UNITED STATES RAILWAY  
LEASING COMPANY

[CORPORATE SEAL]  
ATTEST:

  
ASST. Secretary

By   
Senior Vice President

STATE OF ILLINOIS  
COUNTY OF COOK

ss

On this 26<sup>th</sup> day of February, 1980, before me personally appeared Curtis C Tatham to me personally known, who being by me duly sworn, says that he is Senior Vice President of United States Railway Leasing Company, and Laurence J Prange President personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rita M Kute  
Notary Public

My Commission Expires Jan 13, 1983

STATE OF DELAWARE  
COUNTY OF NEW CASTLE ss

On this 28 day of January, 1980, before me personally appeared J. H. NORTON to me personally know, who being by me duly sworn, says that he is DIRECTOR - TRANSPORTATION & DISTRIBUTION DEPT. OF E. I. du PONT DE NEMOURS CO. INC. and ROGER W. ARRINGTON to me personally known to be the ASSISTANT Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret Vanore  
Notary Public

FIRST AMENDMENT DATED OCTOBER 31, 1984

FIRST AMENDMENT to that certain Railroad Car Lease Agreement dated December 29, 1979 ("Lease") by and between EVANS RAILCAR LEASING COMPANY, formerly known as United States Railway Leasing Company, as Lessor ("Evans") and E.I. DUPONT DENEMOURS & COMPANY, INC., as Lessee ("DuPont").

W I T N E S S E T H:

WHEREAS, Evans and DuPont entered into the Lease as aforesaid and thereafter executed Schedule 1 thereto dated December 29, 1979 whereunder DuPont agreed to lease nineteen (19) 52'5" Insulated Boxcars ("Cars") from Evans; and

WHEREAS, all parties hereto desire to amend the Lease as it pertains to Schedule 1 as hereinafter indicated:

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The number of cars shall be reduced from twenty (20) to nineteen (19) marked and numbered ARDP 787000-787008; 787010-787019. ARDP 787009 has been destroyed.
2. Effective December 30, 1984 the term of the lease shall be extended for an additional five (5) year period.
3. Effective December 30, 1984 the rental rate shall be \$410 per car per month.
4. All other terms and conditions shall remain the same as agreed to in the Lease dated December 29, 1979 and Schedule 1 dated December 29, 1979.

IN WITNESS WHEREOF, Evans and DuPont have entered into this First Amendment this 31st day of October, 1984.

(CORPORATE SEAL)

ATTEST:

By: J. P. Conner  
Secretary

E.I. DUPONT DENEMOURS & COMPANY, INC.

By: J. J. Montgomery  
President  
MATERIALS AND LOGISTICS DEPARTMENT

(CORPORATE SEAL)

ATTEST:

By: Laurence P. Prange  
Assistant Secretary

EVANS RAILCAR LEASING COMPANY

By: Curtis C. Tatham  
Senior Vice President Marketing